

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Aqua Illinois, Inc.

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Docket No. 14-0419

**Proposed general increase in water
rates for the Kankakee service
territory**

REPLY BRIEF ON EXCEPTIONS OF THE STAFF

OF THE ILLINOIS COMMERCE COMMISSION

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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Rule 200.800 of the Rules of Practice before the Illinois Commerce Commission. 83 Ill. Adm. Code 200.800, and respectfully submits its Reply Brief on Exceptions in the above-captioned proceeding.

I. INTRODUCTION / STATEMENT OF THE CASE

Aqua Illinois, Inc. (“Aqua,” “Aqua Illinois” or the “Company”) on May 8, 2014 filed with the Illinois Commerce Commission (“Commission”) tariffs and charges pursuant to 83 Ill. Admin. Code 285.145 and Section 9-102 of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/9-102. On May 27, 2014, Aqua submitted a supplemental Part 285 filing. On June 2, 2014, the ALJ issued a Deficiency Letter to Aqua. On June 11, 2014, the Commission issued a Suspension Order pursuant to Section 9-201 of the Act, 220 ILCS 5/9-201, by which the Commission suspended the proposed general increase in water

rates for the Kankakee service territory for a period of 105 days beginning with June 22, 2014, to and including October 4, 2014.

A status hearing was held on July 1, 2014 at which time a procedural schedule was set in this matter. As part of the schedule, the ALJ directed the parties to prepare a pretrial memo to be filed on November 14, 2014. Tr. 4. Pursuant to the procedural schedule, Staff filed Direct Testimony on September 4, 2014. Aqua filed Rebuttal Testimony on October 2, 2014. On October 30, 2014, Staff filed Rebuttal Testimony. On November 14, 2014, the parties submitted Pretrial Memoranda pursuant to direction of the ALJ. On November 20, 2014, a hearing was convened, and testimony taken and evidence adduced. Tr. 11-115. Staff and Aqua filed Initial Briefs on December 10, 2014. Staff and Aqua circulated Reply Briefs on December 18, 2014. Staff filed the Reply Brief on December 19, 2015. The ALJ issued a Proposed Order on February 2, 2015.

Staff and Aqua filed Briefs on Exception ("BOE") on February 13, 2015. Staff stated that in general, the PO reviews the issues presented in this proceeding in a clear and concise manner, and reflects the positions taken by Staff and the Applicant. Staff took exceptions, however, to some of the Proposed Order's reasoning, findings and conclusions. Staff filed a Corrected BOE on February 23, 2015. Staff now files this Reply Brief on Exceptions ("RBOE") in response to Aqua's BOE.

In doing so, the Staff notes that it has prepared its RBOE so that it tracks the outline of the PO and BOEs.

II. RATE BASE

A. Uncontested Issues

1. **Corporate Office Plant in Service**
2. **Derivative Impacts**
3. **Working Capital**

III. OPERATING EXPENSES

A. Uncontested Issues

1. **Industry Association Dues**
2. **Charitable Contributions**
3. **Advertising Costs**
4. **Incentive Compensation**
5. **Accumulated Deferred Income Tax**
6. **Income Tax Expense**
7. **Wages and Salaries Expense**
8. **Contractual Services, Other**
9. **Parent company Service Charges**
10. **Employee Benefits Expense**

B. Contested Issues

1. **Rate Case Expense**
 - a. **Expert Witness Fees**
 - b. **Rate Case Expense for Services Performed by Aqua Illinois and Aqua America**

IV. OTHER REVENUES

A. Uncontested Issues

1. Late Payment Fees

B. Contested Issues

1. Adjustment to Other Revenues-Home Serve

The PO trenchantly observes that “the obvious purpose of Sections 7-101 and 7-102 of the Act is to protect ratepayers from situations where a utility places the interests of its affiliates over those of the ratepayers that it serves.” PO, 22. The PO further observes that Section 7-101(c) “is designed to prevent regulated utilities from subsidizing their unregulated affiliates to the detriment of the regulated utility’s ratepayers.” PO, 21. Likewise, the PO notes that Section 7-102(c) “prohibits any use of utility property, except as is exempted by law, by an affiliate without Commission approval.” PO, 22. The PO concludes from this that “the whole purpose of Sections 7-101 and 7-102 of the Public Utilities Act is to provide the Commission with the ability to ensure that regulated utilities do not place the financial interests of their affiliates above those of ratepaying consumers.” PO, 60.

Based upon this general understanding of Sections 7-101 and 7-102, the PO appropriately finds that Aqua Illinois violated the Act by its “arrangement” with Aqua Resources. PO, 22-23. Further, the PO finds that the language of the Service Agreement clearly does not “contemplate the provision of mundane, day-to-day services like billing and customer services.” PO, 59. When this latter fact is coupled with the fact that Aqua Services is not a party to the Service Agreement, it is apparent that Aqua Illinois has received services from its affiliates that were never approved by the Commission as

required by the Act.

Since it cannot refute these central legal determinations, Aqua Illinois reiterates the same arguments that the PO found unpersuasive. Confronted with the fact that its actions were not legal, Aqua Illinois asserts that no harm resulted from the illegality. The Commission should disregard such protests as (1) incorrect; and (2) irrelevant.

First, the PO has already found that Aqua Illinois' interactions – whatever they might have been - with Aqua Resources did in fact constitute an abuse of Aqua Illinois' relationship with ratepayers. PO, 23. If Aqua Illinois truly wanted to help its ratepayers receive a valuable service, it would have used the market value of its utility property to offset rates.

Second, even assuming no harm to ratepayers had resulted, it avails Aqua Illinois not at all. Aqua Illinois' argument is no different from that of a motorist who, caught driving at 60 miles per hour in a school zone, submits that he should not be penalized because, on this one occasion, no schoolchildren were harmed. Such an argument obviously cannot stand; the purpose of Sections 7-101 and 7-102, like the 20 mile-per-hour speed limit in areas adjacent to schools, is intended to prevent conduct likely to cause harm. A violation of either is *per se* sanctionable, whether harm resulted or not.

Aqua argues that:

The Proposed Order's conclusion to impute \$79,732 in Other Revenues into the 2015 Test Year is not based on the evidence and is tantamount to imposing a punitive sanction: an action to which the Commission has no authority. See 220 ILCS 5/4-203; 5/5-202; *Bus. and Prof. People for the Pub. Interest v. Ill. Commerce Comm'n*, 136 Ill. 2d 192, 201 (1989) (holding that the Commission's powers and authority are defined by the terms of the Act).

This argument bears no scrutiny. As the PO observes, PO, Section 7-102(c) prohibits the sale of utility property – which clearly includes the customer information at issue here – without Commission approval. 220 ILCS 5/7-102(c). Likewise, transactions with affiliated interests are void if not approved by the Commission. 220 ILCS 5/7-101(3). Thus, however one chooses to characterize the arrangement that caused Aqua Illinois customer information to come into the possession of HomeServe, it happened in a manner contrary to statute, and is therefore void. See, e.g., Chicago Bd. of Educ. v. Chicago Teachers Union, 26 Ill. App. 3d 806, 811 (1st Dist. 1975) (“A contract expressly prohibited by a valid statute is void, and there is no exception to this rule for the reason that the law cannot at the same time prohibit a contract and enforce it.”) It is well established in Illinois that a contract which is void *ab initio* is treated as if it never existed, and neither party can ratify it. Ill. State Bar Ass’n Mutual Insurance Co. v. Coregis Insurance Co., 355 Ill. App. 3d 156, 164 (1st Dist. 2004). This being the case, it is clear that the arrangement with HomeServe, pursuant to which regulated utility assets (in the form of customer information) were sold without Commission approval, is void, and must be treated as if it never existed. Further, the only way to make ratepayers whole from voiding this unenforceable arrangement is to impute the benefits of the arrangement against the revenue requirement so as to put the parties back in the position they were in had the contract never existed.

Aqua Illinois next argues that:

The Proposed Order relies upon Staff’s erroneous claim that Kankakee ratepayers were somehow harmed from the provision of the Company’s customer information to a third-party (HomeServe USA (“HomeServe”)) for limited marketing purposes that occurred for a 22-month period ending June 2012.2 PO at 22-26. Staff’s \$79,732 figure is premised on the estimated level of revenues that might be generated from Aqua Illinois customers purchasing the HomeServe product during the 2015 Test Year. However, Staff’s claim of

harm is unfounded, as the record contains no such evidence. Moreover, Staff's \$79,732 figure is unreliable. Aqua BOE at 2-3.

In sum, there have been no allegations (let alone demonstrations) of harm to ratepayers related to any potential ambiguity in the existing affiliate agreements. For all of these reasons, there is no evidentiary basis to initiate an investigation into the Company's historical affiliate activities. Aqua BOE at 6.

This conclusion makes the erroneous and unsupported assumption that Aqua Illinois customers are being harmed – there has been zero evidence presented in the record to lead to the conclusion that any harm is occurring, or that ratepayer interests are not being prioritized and protected. 12..... Notably, neither Staff nor the Proposed Order identifies what, specifically, this supposed harm or continuing wrong is. Aqua BOE at 13.

At no time in over a decade has there been a demonstration of harm related to the potential ambiguity in the AIAs contracts governing the provision of customer service and billing operations. And, the record here offers no evidence of harm. As such, a historical review of such activity is unwarranted and inappropriate. Aqua BOE at 24

As noted above, Aqua Illinois' BOE conflates "wrong" with "harm." Whether or not harm resulted is irrelevant; what is relevant is that Aqua Illinois or its affiliates violated Sections 7-101 and 7-102. The PO does not mention "harm." Staff does not mention "harm" in testimony or briefs. The Act does not mention "harm." However, the PO clearly states, "the transfer of customer of information is a continuing wrong, in that, due to the transfer of this information, there continues to be a situation where the interests of affiliates continue to be placed above those of Aqua Illinois Kankakee's ratepaying consumers." PO, 23.

Aqua Illinois next argues that:

That docket is irrelevant to the instant proceeding, and should not serve any precedential value or act as guidance in this docket. *See Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 405 Ill. App. 3d 389, 408 (2nd Dist. 2010) ("Illinois courts have consistently held that „decisions of the Commission are not *res judicata*"); *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2nd 111, 125 (1995).

...

The revenue received by Aqua Resources through 2014 is entirely separate and distinct from the revenue received by Aqua Illinois from 2010 through 2012. Tr. at 27:16-29:22. Aqua BOE at 14.

...

In effect, the Proposed Order seeks to impose an adjustment on Aqua Illinois related to profits gained in 2014 by Aqua Resources, profits which are unrelated to Aqua Illinois or, more specifically, to the Kankakee Division.

Aqua BOE, 16.

Because Aqua Illinois assiduously avoids addressing the legal question of whether it violated Sections 7-101 and 7-102, it advances the flawed argument that the only adjustment to the its revenue requirement resulting from the unlawful arrangement should be the sum it actually has received historically, as opposed to the revenues received by its unregulated affiliates derived from the unlawful use of Aqua Illinois utility property. The PO properly rejects this argument by stating the following:

At a minimum, Aqua Resources continues to reap the benefits of the illegal transfer of its customer information. Sections 7-101 and 7-102 of the Public Utilities Act prohibit this type of arrangement and the Commission is only recuperating [sic] the gains from that arrangement. Were this Commission to rule otherwise, it would only be fostering arrangements in the future, whereby, a utility places the interests of its affiliates above those of ratepaying consumers, but where, the utility claims to have no knowledge as to how that occurred.

PO, 23.

Aqua Illinois next argues that:

Although the Proposed Order argues that "Aqua Illinois' adjustment is only based on seven months of information," (PO at 25) the Company has, in fact, demonstrated that the seven months of data is unrelated to this calculation, and does not form the basis of any proposed alternative adjustment. Aqua Rep. Br. at 12. Instead, the seven months of data identified by the Proposed

Order represents the level of revenues "related to Aqua Illinois that Aqua Resources received from HomeServe." Kahoun Reb., Aqua Ex. 6.0, 8:160-165.

Aqua BOE, 15.

While Aqua Illinois' BOE repeats its assertion that "the seven months of data identified by the Proposed Order represents the level of revenues 'related to Aqua Illinois that Aqua Resources received from HomeServe,'" (Aqua Illinois BOE, 15) this statement does not become true by its repetition. As the PO properly notes, neither Aqua Illinois witness verified any of this data. PO, 23. Furthermore, it is not accurate to state, as Aqua Illinois does, that "the Company has, in fact, demonstrated that the seven months of data is unrelated to this calculation, and does not form the basis of any proposed alternative adjustment." Aqua Illinois BOE, 15. First, the seven months of data was used by Ms. Kahoun to propose an alternative adjustment of \$7,469.80 in her rebuttal testimony. Aqua Ex. 6.0, 8. Second, this figure was used to support Ms. Kahoun's claim that HomeServe revenues in Illinois were declining (*Id.*) and Mr. Hanley's claim that the number of HomeServe customers in Illinois was declining. Aqua Ex. 11.0, 7. Thus, Mr. Hanley's adjustment of \$7,473 which was adopted by Aqua Illinois in surrebuttal testimony and following (and was only \$3.20 more than the 7-month figure of alleged net revenues) was based upon the conclusions erroneously derived from this data as Mr. Hanley rejected Staff's proposal because it overlooked this decline. *Id.* Instead, the annualized amount shows that Aqua Illinois' alternative adjustment is sadly beneath even the numbers that Aqua Illinois accepted without verification from Aqua Resources and HomeServe. Staff IB, 33. Therefore, Aqua Illinois' own current adjustment is based on and derived from this allegedly improper use of 7 months' worth of data.

Aqua Illinois next argues that:

Moreover, as explained above, Aqua Illinois has not and will not receive any signing bonuses in the 2015 test year. Further, whether Aqua Resources receives such bonuses in 2015 is wholly irrelevant to this case and to Kankakee's 2015 test year. Notably, at no point did Staff offer any reasoning or analysis to prove or even suggest why these bonuses should be assigned to Aqua Illinois. Similarly, the Proposed Order contains no analysis to support this credit.

Aqua BOE, 16.

This statement is absolutely incorrect. Staff provided information about these bonuses in direct testimony (Staff Ex. 5.0, 25-26; 10.0, 13) and rebuttal testimony. Staff Ex. 10.0, 13. Finally, this issue was fully addressed from the record in Staff's Reply Brief. Staff RB, 25-26.

In summary, the PO is entirely correct, and Aqua Illinois' exceptions to it should be rejected. The Commission should impute the entire adjustment of \$79,732 against Aqua Illinois' revenue requirement.

V. RATE OF RETURN

A. Uncontested Issues

1. Capital Structure and Cost of Debt

B. Contested Issues

1. Return on Equity ("ROE")

a. STAFF'S POSITION

In Aqua Illinois' Brief on Exceptions ("BOE"), under Exception No. 3, the Company maintains that its 10.25% proposed return on equity ("ROE") is reasonable. (BOE, 19.) The Company's arguments should be rejected. The Company raises arguments effectively reiterating those rejected in the Proposed Order and fully addressed in Staff's

Reply Brief. To the extent that a response may be warranted, however, Staff reiterates its arguments set forth in its testimony and briefs and considers further response to be cumulative and unwarranted.

Specifically, the Company raised the following four topics in its brief on exceptions regarding Exception No. 3:

- 1) On page 18 of the Aqua BOE, the Company raises the question of incentivizing water/sewer utilities to invest in troubled water or sewer systems. This argument should be rejected for the reasons set forth in Staff's Reply Brief at pages 17-18.
- 2) On page 19 of the Aqua BOE, Aqua alleges flaws and inconsistencies in Staff's ROE analysis. Staff fully addressed this question in Staff's Reply Brief at pages 2-18.
- 3) On pages 19-20 of the Aqua BOE, the Company alleges that the Size Premium finding was one-sided and disregarded evidence presented by the Company. This argument should be rejected for the reasons set forth in Staff's Reply Brief at pages 14-16.
- 4) On pages 20-21 of its BOE, Aqua Illinois stated that Staff's recommended ROE is "significantly below the authorized returns on equity for Aqua Illinois' sister companies," arguing that that shows the proposed ROE is unreasonably low. This argument should be rejected for the reasons set forth in Staff's Reply Brief at pages 16-17.

Aqua Illinois' arguments should be ignored. All the substantive topics raised have been fully addressed in Staff's Reply Brief as noted above.

In addition, as an alternative for the ROE adopted in the PO, Aqua Illinois proposes two options on page 21 of its BOE. First, and without any explanation, Aqua asserts that in the event that the Commission gives any weight to the results of Staff's cost of common equity estimate, the Commission should give 100% weight to the upper end of Staff's range of return on common equity. (Aqua BOE, 21.) Second, Aqua Illinois states that if the Commission declines to give 100% weight to the upper end of Staff's range of return on common equity, the Commission should follow the approach "currently followed by regulators as a result of the existence of unusual capital market conditions." (Id.) Aqua Illinois argues that under this approach, "the Commission should set the return on equity halfway between Staff's proposed ROE (9.07%) and the upper end of Staff's range of return on common equity (9.77%). Aqua Illinois states that this "would indicate a 9.42% cost of equity for Aqua Illinois based on Staff's analysis." (Aqua BOE, 21, citing Aqua Ex. 8.0, 12.)

Regarding the first alternative proposed by Aqua Illinois, the Company provided no firm basis for indicating why the Commission should give 100% of the weight to the upper end of Staff's range of return on common equity, but merely proposes this in the apparent hope that the Commission will ignore the sound reasoning of the PO in favor of an approach not based on evidence. Simply put, by advancing this argument Aqua Illinois is stating nothing more than that it wants a higher ROE. In advancing this argument, Aqua Illinois does not point to any error on the part of the ALJ in her findings, and thus, its argument should be dismissed outright.

Regarding the second alternative, advanced on page 21 of its BOE, Aqua Illinois states specifically, "...the Commission should follow the approach currently followed by

regulators as a result of the existence of unusual capital market conditions. Under this approach, the Commission should set the return on equity halfway between Staff's proposed ROE (9.07%) and the upper end of Staff's range of return on common equity (9.77%).” As an initial matter, it is well established that the Illinois Commerce Commission is not obligated to follow other regulators. Aside from the obvious point that other regulators have no jurisdiction over these matters in Illinois, Aqua Illinois’ interpretation of what “regulators” do is misleading.

First, to clarify, when Aqua Illinois refers to “regulators,” it in fact only provides support for one regulator, the Federal Energy Regulatory Commission (“FERC”), which uses the methodology Aqua Illinois desires the Commission follow.

Second, Aqua Illinois claims that the FERC implemented this methodology for determining ROE due to “unusual capital market conditions,” there is nothing in the FERC order that indicates that Aqua Illinois’ claim is true.

Finally, Aqua Illinois’ recommendation to set the ROE halfway between Staff’s proposed ROE and the high end of Staff’s ROE range is misleading in two respects. First, the Staff range upon which Aqua relies is based on DCF and CAPM analyses, whereas FERC applied a two-step DCF methodology for determining the ROE. Second, even if Aqua Illinois had applied the FERC methodology – using only the two step DCF analysis - the Company’s implementation is inconsistent with the methodology that FERC employed in the Opinion cited by Aqua Illinois, FERC, using solely the two-step DCF analysis, sets the range of reasonableness as the lowest and highest individual ROE estimates from the companies in the proxy group. After setting the range of reasonableness, FERC then set the ROE halfway between the midpoint of the range of

reasonableness and the high end of that range. Applying FERC's methodology to Staff's non-constant DCF analysis would result in a range of reasonableness of 7.27% to 9.17%. (Staff Ex. 3.00, Schedule 3.05.) Thus, the FERC methodology ROE would be 8.7%, 37 basis points lower than Staff's recommended ROE of 9.07%. Id.

In summary, the Commission should adopt PO's findings with respect to rate of return in their entirety, and reject Aqua Illinois' exceptions. The Commission should find that Aqua Illinois is entitled to a return of 7.69% on its net original cost rate base, which incorporates a return on common equity of 9.07%.

b. AQUA ILLINOIS' POSITION

VI. RATE DESIGN

A. Cost of Service Study

1. Analysis and Conclusion

B. Rate Design

1. Analysis and Conclusion

VII. OTHER

A. Uncontested Issues

1. Affiliate Interest Agreements Update

B. Contested Issues

1. Request to Initiate Investigation of Affiliated Interest Abuses

a. STAFF POSITION

Aqua argues that:

Therefore, even if the Company's history is at issue here, the Company respectfully submits that there is substantial and compelling evidence explaining that history in this record and in prior docketed cases reviewed and approved by the Commission.

Aqua BOE, 5.

However, contrary to the Proposed Order's assertion that "Aqua Illinois made little effort here to explain to the Commission what really happened," (PO at 62), Aqua Illinois has provided substantial evidence explaining its corporate acquisitions and transitions dating back to 1967, as well as copies of Commission Orders and the relevant AIAs dating back nearly three decades. See, e.g., Staff Cross-Ex. 4.

Aqua BOE, 23.

It would be far more accurate to describe the evidence provided by Aqua Illinois as "insubstantial and unconvincing." Aqua Illinois' evidence that CWC had provided customer service to CIWC prior to the Acquisition consists of a single business card from an employee of the service Company who was not a customer service employee. Staff Ex. 5.0, 20-21; Attachment B, 1-3.

Aqua further asserts that:

The Proposed Order, however, conflates the interpretation issue with an entirely separate issue that was not raised by Staff – the perceived complexity of Aqua America's and Aqua Illinois' historical corporate structure. PO at 61-63. Aqua Illinois respectfully submits that the Proposed Order's statements on these points are incorrect, and do not offer a basis to initiate an investigation into the Company's current, Commission-approved AIAs or the activities related to those agreements.

Aqua BOE, 22-23.

This is, without putting too fine a point upon it, counterfactual. First, Aqua America's intercorporate relations, name changes, and serial mergers render its historical corporate structure and interactions "complex" at the very least; Aqua America's corporate interactions are not even understood by its own witnesses, as the PO observes. See PO, 59 ("No Aqua Illinois witness could testify as to how [the] sale [of customer information to HomeServe] occurred, or, more significantly, how personnel at Aqua Illinois allowed this to happen.") Further, Aqua Illinois fails or refuses to acknowledge that the

PO points to these confusing relationships as a good and compelling reason why Staff may have overlooked improperly received services in prior proceedings. PO, 58.

Aqua Illinois next argues that:

Further, a historical investigation is unnecessary and inappropriate in light of the uncontroverted fact that the Company's affiliate transactions, as well as the costs associated with those transactions, have been the subject of Commission and intervenor review for more than a decade as part of rate case proceedings. Notably, neither Staff nor the Proposed Order offers an explanation or justification as to why the Commission's previous review of the reasonableness of the Company's costs, including those expenses related to customer service and billing operations, should be dismissed. The Proposed Order assumes that "undoubtedly, the reason that the issue which Staff presents here did not surface in earlier Aqua rate case [sic] is due to the fact that the...AIAs...do not reflect the actual parties." PO at 61. Respectfully, this assumption is based upon unfounded speculation, and incorrectly assumes that neither the Commission nor any intervenors have been able to identify such costs in the Company's numerous rate case filings. At no time in over a decade has there been a demonstration of harm related to the potential ambiguity in the AIAs contracts governing the provision of customer service and billing operations. And, the record here offers no evidence of harm. As such, a historical review of such activity is unwarranted and inappropriate.

Aqua BOE, 24

These assertions are, again, counterfactual. The PO does indeed state precisely why it concluded that the arrangements escaped scrutiny, as follows:

Undoubtedly, the reason that the issue which Staff presents here did not surface in earlier Aqua rate case is due to the fact that the inter-company contracts (the AIAs) do not reflect the actual parties, and are [a] confusing mess of entanglements resulting from corporate mergers and acquisitions. These contracts have not been updated for decades, while the entities involved in performing the duties pursuant to those contracts have changed in an imprecise manner.

...

Obviously, what really happened amongst these corporate affiliates is still unknown, due, in part to the confusing corporate successions and no attempt by Aqua Illinois to replace contracts, some of which are decades old, with contracts that reflect the current parties in interest. The Commission also notes that Aqua Illinois made little attempt here to explain

to the Commission what really happened.

PO, 58, 59

As the PO further makes clear:

Further, as Staff has noted, there is no evidence that Aqua Services can legally provide any service to Aqua Illinois, even though Aqua Illinois alleges here that Aqua Services provides a variety of specialized services to Aqua Illinois, like, legal services, engineering services, accounting and like professional services. To further complicate matters, Aqua Services apparently also provides non-professional services to Aqua Illinois, such as, billing and customers service representation, although, nowhere is there a Commission-authorized contract for Aqua Services to provide these services. And, allegedly, Aqua Services has been providing these services since 1999.

Id., 58-59

Finally, there is the fact that Company witness giving testimony regarding intercorporate relations in prior rate cases was found by the PO to “not [be] a credible witness.” PO, 60. To the extent that the Commission or Staff relied on such testimony in prior cases, neither can be faulted.

The Company next asserts that:

The Company disagreed with this contention, and provided testimony explaining that under the prior owners, certain customer service related activities were provided through a service company model, including “support of the billing system including software and coordinated software updates and maintenance.” Hanley Sur., Aqua Ex. 11.0, 13:278-279.

Aqua BOE, 22

...

The Proposed Order incorrectly criticizes Aqua Illinois witness Mr. Hanley based on the conclusion that Mr. Hanley’s testimony in the instant proceeding contradicts his testimony in other, prior Commission proceedings. See PO at 62 (“Although...[Mr. Hanley] essentially asserts that Aqua Services, or its predecessor company, Consumers Water Company, has been providing billing and customer services to Aqua Illinois since 1999, he has, in fact,

testified in Commission proceedings that Aqua America provided those services”). However, as discussed [Aqua BOE at 24] above, Aqua Illinois has provided testimony explaining that under the prior owners – CWC certain customer service related activities were provided through a service company model, including “support of the billing system including software and coordinated software updates and maintenance.” Hanley Sur., Aqua Ex. 11.0, 13:278-279. Aqua Illinois has never contested the fact that certain customer service functions were provided at the local level at the time of CWC’s ownership. However, Aqua Illinois similarly has never argued that customer service functions were provided exclusively by a single party. Aqua Illinois has been clear that other elements of customer service functions – including billing – were provided through the service company model. See Hanley Sur., Aqua Ex. 11.0, 13:278-279. Thus, the Proposed Order’s criticisms are unfounded. In addition, in light of the evidence presented in this docket, the Proposed Order has no basis for its finding that Mr. Hanley is not a credible witness. See PO at 62.

Aqua BOE, 25.

Finally, Aqua attempts to use the term “certain” to obfuscate Mr. Hanley’s contradictory testimony and information. This phrase “certain customer service related activities” first appeared in Mr. Hanley’s surrebuttal testimony. Never in any discovery did that distinction ever show up. In fact, Staff asked about “Corporate Customer Services (Aqua Customer Operations) Aqua Illinois utilizes the Aqua America regional call centers and central billing software to serve its customers” as described in Aqua Ex. 2.2. It is Aqua Illinois’ position that Aqua America first performed customer services for Aqua Illinois in 1999. Staff Ex 5.0, 17, *citing* Aqua Illinois Response to Staff DR DAS 2.02(a). Further, Staff asked whether Consumers Corporation used a service company for providing customer service to its ratepayers and whether Philadelphia Suburban Corporation adopted a Consumers Corporation service company model for providing customer service to its ratepayers. Mr. Hanley answered with an unqualified “yes” to both. Staff Ex. 5.0, Attachment B. At no time prior to surrebuttal did Mr. Hanley suggest that “certain customer service functions were provided at the local level at the time of

CWC's ownership" as the BOE argues. Also, Staff's direct testimony establishes that these services were alleged to have been provided since 1999. Staff Ex. 5.0, 17-21. Aqua Illinois has never differentiated between total or partial provision of these services. Thus, Mr. Hanley's qualified statement given for the first time in surrebuttal testimony does not make him a credible witness, as the PO correctly determined. Rather, it leads to the same conclusion for this case.

Aqua finally argues that:

Even if the Commission were to determine that a historical review of the Company's affiliate activities are warranted, the Proposed Order's recommendation that Aqua America, Aqua Services, and Aqua Resources be made a party to Aqua Illinois' affiliated interest proceeding is improper and beyond the scope of the Commission's jurisdiction. PO at 63. Pursuant to the Act, the Commission has general supervision of all public utilities located within the state of Illinois. See 220 ILCS 5/3-105; 5/4-101. This jurisdiction does not extend to Aqua America, Aqua Resources, or Aqua Services, entities that are undeniably not regulated by the Commission. There is no basis to implicate Aqua Resources or Aqua America in an investigation – the evidence shows that the services provided to Aqua Illinois have been under Commission review for more than a decade. Additionally, there is no evidence in the record to demonstrate that a transaction took place between Aqua Illinois and Aqua Resources – indeed, the evidence shows that Aqua Illinois has no contractual relationship with Aqua Resources. Aqua Init. Br. at 16.

Aqua BOE, 25-26.

There are several glaring defects in this argument. First, as the PO notes, the proposition that the Commission's jurisdiction does not extend to Aqua Illinois' affiliates is simply contrary to statute. PO, 60; *see also* 220 ILCS 5/7-101(2)(i). Second, there is ample evidence that a transaction of some sort took place between Aqua Illinois and Aqua resources. This is, in fact, precisely the problem. As is clear from the PO, Aqua Resources somehow came into possession of, and thereafter sold to HomeServe, ratepayer information belonging as a matter of law to Aqua Illinois. See PO, 59. While no

Aqua Illinois witness could explain how this came to occur, PO, 59, the fact remains that it very obviously did occur. Pretending that this is not a “transaction”, albeit an entirely unsanctioned and unlawful one, simply does not bear scrutiny.

In summary, the PO is entirely correct, and Aqua Illinois’ exceptions to it should be rejected. The Commission should require Aqua Illinois to file an affiliated interest proceeding updating all of its relevant affiliated interest contracts; at which time Commission Staff may investigate, consistent with the Proposed Order, which affiliates have been providing services to Aqua Illinois and which affiliates will provide services to Aqua Illinois in the future. This affiliated interest proceeding should include the relationship between Aqua Illinois, Inc. and its affiliates, Aqua America, Aqua Services and Aqua Resources.

VIII. FINDINGS AND ORDERING PARAGRAPHS

IX. TECHNICAL CORRECTIONS

X. CONCLUSION

WHEREFORE Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

/s/

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